

OCT 5 2011

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

PEDRO MORA,

Defendant - Appellant.

No. 09-50514

D.C. No. 2:09-cr-00178-PA

MEMORANDUM*

Appeal from the United States District Court
for the Central District of California
Percy Anderson, District Judge, Presiding

Submitted September 27, 2011**

Before: HAWKINS, SILVERMAN, and W. FLETCHER, Circuit Judges.

Pedro Mora appeals from the 92-month sentence imposed following his jury-trial conviction for being an illegal alien found in the United States following deportation, in violation of 8 U.S.C. § 1326. We have jurisdiction under 28 U.S.C. § 1291, and we affirm.

* This disposition is not appropriate for publication and is not precedent except as provided by 9th Cir. R. 36-3.

** The panel unanimously concludes this case is suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

Mora contends that the district court plainly erred because it failed to consider a proposed guideline amendment deleting the provision for “recency points” in calculating criminal history under U.S.S.G. § 4A1.1(e) at the time of sentencing. This contention is without merit. The district court accurately calculated the guideline range applicable at the time of sentencing. *See United States v. Ruiz-Apolonio*, No. 10-50306, 2011 WL 4060803 at 8-9 (9th Cir. Sept. 14, 2011); *see also United States v. Carty*, 520 F.3d 984, 991 (9th Cir. 2008) (en banc).

Mora also contends that his sentence is substantively unreasonable because it did not reflect the proposed amendment to U.S.S.G. § 4A1.1. In light of the totality of the circumstances and the 18 U.S.C. § 3553(a) sentencing factors, the sentence is substantively reasonable. *See Gall v. United States*, 552 U.S. 38, 51-52 (2007).

AFFIRMED.